

RULES FOR THE UTILIZATION OF SURFACE WATER

TITLE III

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RULES FOR THE UTILIZATION OF SURFACE WATER
[As Amended February 16, 1994]

TITLE III

SUBTITLE I. GENERAL

Section 301.1. PURPOSE.

A. In keeping with the policy of the State of Arkansas, the purpose of these rules is to encourage and facilitate the conservation, development and efficient use of surface water. Sensitivity to the public interest by the entire state requires the protection of: existing surface water uses; needs of all existing federal water projects; firm yield of all existing reservoirs; instream needs; and future water needs.

B. In pursuit of these objectives, these rules establish a procedure for surface water diversion registration, authorization of intrabasin and interbasin diversion by non-riparian owners, interstate transfers of water and allocations during times of water shortages.

Section 301.2. ENABLING AND PERTINENT LEGISLATION.

A. Ark. Code Ann. •15-22-201, et seq., Allocation and Use of Water.

B. Ark. Code Ann. •15-22-301 et seq., Determination of Water Use Requirements.

C. Ark. Code Ann. •15-22-501 et seq., Water Development Projects Generally.

D. Ark. Code Ann. •15-20-201 et seq., Soil and Water Conservation Commission.

E. Ark. Code Ann. •15-23-401 et seq., Arkansas River Compact.

F. Ark. Code Ann. •15-23-501 et seq., Red River Compact.

G. Ark. Code Ann. •25-15-201 et seq., Arkansas Administrative Procedure Act.

Section 301.3. DEFINITIONS.

The following definitions shall apply to all parts of these rules:

A. Affected Persons: Persons, other than the petitioner, whose water rights could reasonably be affected by permitting or allocation of water under these rules.

B. Allocation: The assignment of an allowance of a specific quantity of water that may be removed from any given stream and transported away from the stream for a designated beneficial use during times of shortage.

C. Allocation Level: The level of a stream at which a water shortage occurs and the allocation process begins.

D. Arkansas Water Plan: The comprehensive program for the orderly development and management of the State's water and related land resources developed by the Commission.

E. Average Annual Yield: The average of the quantity of water passing through a watershed each year during the applicable period of record. In the event adequate records are not available for an arithmetic average, a suitable estimate may be computed.

F. Basin of Origin: The water basin from which an interbasin transfer of surface water is diverted.

G. Beneficial Use: The instream and offstream uses of water in such quantity as is economical and efficient and which use is for a purpose and in a manner which is reasonable, not wasteful, and compatible with the public interest.

H. Commission: The Arkansas Soil and Water Conservation Commission as defined in Ark. Code Ann. •15-20-201 et seq.

I. Commissioner: A member of the Arkansas Soil and Water Conservation Commission, as defined in Ark. Code Ann. •15-20-201 et seq.

J. Conservation District: A district created under the Conservation Districts Law, Title 14, Chapter 125 of the Arkansas Code of 1987 Annotated.

K. Conservation Plan: A plan as evidenced by written document for implementation of economical and technically feasible practices for improving the efficiency of water use. At a minimum, the Plan shall address the following concerns where applicable: leakage and loss control, water reuse, promotion of water saving devices, drought emergency plans, irrigation system efficiency and tailwater recovery.

L. Critical Surface Water Area: An area where current water use, projected water use or quality degradation has or will cause a shortage of useful water within a relatively short period of time for a sufficient length of time to be expected to cause prolonged economic or environmental problems.

M. Diffused Surface Water: Water occurring naturally on the surface of the ground other than in natural or altered stream channels, lakes or ponds.

N. Director: The Executive Director of the Arkansas Soil and Water Conservation Commission, as defined in Ark. Code Ann. •15-20-201 et seq.

O. District: Conservation district or regional water district.

P. Diverter: Any person that removes water from any source and makes any use thereof.

Q. Domestic Use: The use of water for ordinary household purposes including human consumption, washing, the watering of domestic livestock, poultry and animals and the watering of home gardens for consumption by the household.

R. Excess Surface Water: Twenty-five per cent (25%) (to automatically increase to any higher percentage authorized by the Arkansas General Assembly simultaneous with the effective date of any such Act) of the average annual yield from any watershed above that amount, as determined by the Commission, required to satisfy all of the following that are applicable:

1. Riparian and non-riparian usage reported for the 1989 water year as provided for in Title III Subtitle II.

2. The water needs of federal water projects as they existed on June 28, 1985.

3. The firm yield of all affected reservoirs existing on June 28, 1985.

4. Maintenance of minimum stream flows for the following streams (these constitute an initial phase. Other streams will be added as needs arise and resources are made available):

(a) Arkansas River from Oklahoma boundary to mouth.

(b) Black River from Missouri boundary to mouth.

(c) Eleven Point River from Missouri boundary to mouth.

(d) Ouachita River from Lake Catherine to Louisiana boundary.

(e) Red River from Texas boundary to Louisiana boundary.

(f) St. Francis River from Marked Tree to mouth.

(g) Spring River from Missouri boundary to mouth.

(h) White River below Bull Shoals Lake to mouth.

5. Future water needs of the watershed as projected in the Arkansas Water Plan.

S. Firm Yield: The maximum amount of water the reservoir will yield based upon the worst period of record, recognizing that a more severe drought than any on record may occur.

T. Interbasin Transfer: The transfer of water between basins, except transfers across a basin boundary by a riparian, as described in Title III Subtitle V.

U. Intermittent Stream: Those streams whose flow is seasonal in nature and does not flow continuously. (The intent of the Commission is to define intermittent streams by a statistical method once sufficient stream flow data is

available at the conclusion of the "Low flow characteristics of Arkansas streams study").

V. Intrabasin Transfer: The transfer of water within a basin, as described in Title III Subtitle IV.

W. Minimum Stream Flow: The quantity of water required to meet the largest of the following instream flow needs as determined on a case by case basis:

1. Aquifer recharge.
2. Fish and wildlife.
3. Interstate compacts.
4. Navigation.
5. Water quality.

X. Municipal Domestic Use: The use of water for ordinary household purposes including human consumption, laundry, bathroom facilities, fire protection, and the watering of home gardens, which is distributed by a central distribution system.

Y. Navigable Stream: Any watercourse that the federal government or the laws of the State of Arkansas declare to be navigable or that can be found to be navigable as a matter of fact.

Z. Non-Consumptive Use: The withdrawal of water for use in a manner that results in an approximately equal volume of water being returned to the same surface water body from which it was withdrawn.

AA. Non-Riparian Owner: The owner of land that is not contiguous to surface water and who has not obtained access to surface water by lease, easement or other method prior to March 1, 1990.

BB. Non-Riparian Water Right: A permit issued under these regulations to use excess surface water.

CC. Permittee: The holder of a water right permit.

DD. Person: Any natural person, partnership, firm, association, cooperative, municipality, county, public or private corporation, and any federal, state or local governmental agency.

EE. Petitioner: A person, other than the Commission, who seeks allocation of water through the Commission's Rules.

FF. Regional Water District: A district created under the Regional Water Distribution Act, Title 14, Chapter 116 of the Arkansas Code of 1987 Annotated.

GG. Riparian Landowner: The holder in fee, leasehold, easement or other acquired access of any land that is contiguous to surface water in the State of Arkansas. Provided, however, that the leasehold, easement or other acquired access must have been acquired prior to March 1,

1990. Flowage easements will not invalidate the riparian rights of the landowner.

HH. Riparian Water Rights: Rights to water that accrue to riparian landowners.

II. Shortage: When there is not sufficient water in a stream to meet all beneficial uses.

JJ. Stream: A stream of water and its channel, including springs, lakes, or marshes in which the stream originates or through which it flows, where the stream flows in a reasonably definite channel, but excluding a depression, swale, or gully, through which diffused water flows.

KK. Surface Water: Water occurring on the surface of the ground in lakes, ponds and in natural or channelized streams.

LL. Tailwater Recovery System: A system for recovery and reuse of water by the same diverter.

MM. Water Year: A twelve (12) month period beginning on October 1 of any year.

NN. Watershed: The drainage area of a stream and its tributaries.

Section 301.4. RULES TO SUPPORT COMPACTS.

Any procedure contained in these rules may be used to support and comply with the Red River Compact or the Arkansas River Compact.

Section 301.5. DELEGATION OF AUTHORITY.

The Commission may delegate its authority under these rules to a local district.

SUBTITLE II. SURFACE WATER DIVERSION REGISTRATION

Section 302.1 REQUIREMENT TO REGISTER.

A. All persons who divert surface water, except as hereinafter exempted, shall report the diversion no later than March 1st for the prior water year.

B. The reports shall be made on forms provided by the Commission and shall be made to the Commission or to their local Conservation District.

C. Late registrations will be accepted only upon the payment of the appropriate fee as established by Section 302.7.

Section 302.2. EXEMPTIONS.

The following diversions are exempt from the requirement of registration:

A. Diversions by any person of less than 325,900 gallons (1 acre-foot) of water in any water year.

- B. Water diverted from natural lakes or ponds in the exclusive ownership of one person.
- C. Diffused surface water.

Section 302.3. REPORT CONTENT.

The reports shall contain information requested on the attached (or revised) forms:

- A. For water used for agriculture:
 - 1. Number and size of diversions.
 - 2. Name, address and phone number of water user.
 - 3. Crops, livestock, poultry, or fish type grown.
 - 4. Acreage:
 - (a) Irrigated.
 - (b) Aquacultured.
 - 5. Quantity of water used.
 - 6. Location:
 - (a) Of the diversions, (including real estate tax bill Parcel Number).
 - (b) Of the water use.
- B. For water used for other than agriculture:
 - 1. Number, size, location of diversions.
 - 2. Name, address and phone number of water user.
 - 3. Use made of the water.
 - 4. Quantity of water used.
- C. Other information deemed necessary by the Commission.

Section 302.4 REPORT NO CHANGE IN WATER USE OR NO USE OF WATER.

- A. After the initial report in compliance with this rule, persons whose water use remains unchanged from the prior water year need only report no change in water use.
- B. In the event that no water is diverted during any water year and the person has registered diversions in prior years, the person must submit a registration form showing no diversion to maintain his priority position.

Section 302.5. CERTIFICATES OF REGISTRATION.

- A. Before July 1st of the water year following the water year being reported, the Commission shall furnish to the registrant a certificate of registration containing all the pertinent information set forth by the registrant.
- B. Registrants submitting registration forms after March 1st for the prior water year or registering water that is exempt from registration will not receive Certificates of Registration for that water year.

C. The Commission shall record the information received in all cases of diversions reported even if a Certificate of Registration is not issued thereon.

Section 302.6. REVIEW OF FORM.

The Director shall annually review the form used in obtaining the information required in registering diversions of surface water and shall alter or amend such form as necessary to comply with laws of the State of Arkansas and the rules of the Commission.

Section 302.7. FAILURE TO REGISTER.

A. Any person who fails to timely register surface water diversion as required by law and these rules shall pay fees as follows:

Classification	Fee For Failure To Register By Specified Due Date
First Failure	No Fee - Written Notice Only
Second Failure	\$ 50.00
Third Failure	\$250.00
Fourth and Subsequent Failures	\$500.00

B. Each prior late registration of surface water shall be considered a late registration for classification purposes under these rules.

C. For first and second late registration classifications, all late registered surface water diversions by a single person in a single water year shall be considered one late registration for fee purposes.

D. For third, fourth and subsequent late registration classification, each late registered surface water diversion for each water year may be considered a separate late registration for fee purposes.

Section 302.8. FEES.

A. Assessment: An annual fee of ten dollars (\$10.00) will be assessed per registered withdrawal, payable at the time of water use reporting, no later than March 1st following the reporting water year. A delinquency in paying annual fees will constitute failure to register for surface water withdrawal for the prior water year and will be subject to penalties of Section 302.7.

B. Collection:

1. The Commission may delegate the responsibility for collecting annual fees to the Executive Director or his designee(s).

2. The Commission may delegate the responsibility for collecting annual fees to qualified petitioning entities.

C. Disposition: All monies collected from fees and penalties will be deposited in the Arkansas Water Development Fund to be used pursuant to Ark. Code Ann. •15Å20-207.

1. Two-thirds of such funds shall be used for an information/education program and cost-share assistance for water conservation and development, as provided in Section 401.4C(7) of the Rules for the Protection and Management of Ground Water.

2. One-third of such funds may be used for the administration of the Commission's water management programs.

SUBTITLE III. MINIMUM STREAM FLOW [RESERVED]

SUBTITLE IV. PROCEDURE FOR ISSUANCE OF SURFACE WATER PERMITS FOR INTRABASIN USE BY NON-RIPARIANS

Section 304.1. AUTHORITY.

A person shall be authorized to divert excess surface water for non-riparian use upon proper application and the granting of a permit by the Director.

Section 304.2. DETERMINATION TO GRANT PERMIT.

The Director shall grant a permit after he determines that the water to be used is excess surface water, as defined herein, is intended for a reasonable and beneficial use, and will cause no significant adverse environmental impact. The water may be diverted for storage to meet future needs. In determining the reasonability of the proposed use the Director may consider the following:

- A. The lack of availability at a reasonable cost of alternative sources of water.
- B. The environmental impact of the proposed transfer.
- C. The effect of the proposed transfer on other lawful water uses.

Section 304.3. APPLICATION.

A. Applications for a permit shall be on a form furnished by the Director and shall be filed with the Director. The applicant shall disclose:

- 1. The quantity of water to be diverted for direct use.
- 2. The quantity of water to be stored away from the point of diversion.
- 3. The total amount of water to be diverted.

4. The proposed time or times of diversion.
5. The purpose for which the water is to be diverted.
6. The location of the land on which the water is to be used.
7. The proposed conservation plan.
8. If for irrigation:
 - (a) The area and legal description of the lands irrigated.
 - (b) The types of crops to be cultivated under irrigation during the water year.
9. Any other reasonable information requested by the Director.
- B. All other questions contained on the form shall be answered or stated to be not applicable.

Section 304.4. FEES.

- A. A \$500 fee must be submitted with an application for a permit to make an intrabasin water transfer to a non-riparian.
- B. A \$100 annual permit renewal fee shall be collected on or before October 1st of each year.
- C. Permits shall remain valid from year to year until date of expiration provided annual fees are not delinquent and permit terms are honored. (See Sections 304.11 and 304.12.) The Director may deny an application for or revoke an existing intrabasin water transfer permit if efforts to collect either the application or annual fees fail.
- D. Installation and maintenance of flow measurement devices shall be paid by the permittee.
- E. If the permit is not granted, the portion of the fee applicable to the cost and installation of the flow monitoring gage(s) shall be refunded.

Section 304.5. PERMIT CONDITIONS.

If approved, the Director shall issue a permit and shall designate thereon:

- A. The amount of water permitted.
- B. The authorized use.
- C. The point of approved diversion.
- D. A legal description of the land of intended use.
- E. Approval of the conservation plan.

Section 304.6. SPECIAL CONDITIONS.

The Director may place upon a permit any special conditions necessary to ensure that the water to be diverted is excess surface water and to guarantee a reasonable and beneficial use of the water. The special conditions may include any other reasonable limitations or conditions to protect the environment of the watershed of origin and to insure against an unacceptable

adverse impact of the transfer on other lawful water uses. An example would be limitations on season or time of withdrawal.

Section 304.7. LENGTH OF PERMIT.

Permits for intrabasin transfer may be issued for a period fixed by the Director, taking into consideration the investment required by the permittee to utilize the water and the period reasonably required to amortize such investment, but in no event in excess of fifty (50) years.

Section 304.8. FILING.

A. Upon the issuance of a permit to divert to non-riparian uses, the Director shall furnish the permit to the applicant, a copy to the Commissioners and cause a copy to be retained in the Commission's records at the office of the Commission.

B. The permittee shall record his permit in the office of the Circuit Clerk of the County of the point of diversion.

Section 304.9. PERMITTEE WATER USE REPORT.

All permittees shall report the amount of water diverted during each water year of the permit pursuant to Title III Subtitle II of these rules.

Section 304.10. CHANGE IN PERMIT CONDITIONS.

A. Permittee shall notify the Director of his desire to transfer the permit to another person. Permits are freely transferable.

B. Permittee wishing to make other changes in permit conditions shall seek prior approval of the Director. The procedures set out in these rules shall be used for permit modification other than as set out in Subsection A.

Section 304.11. CANCELLATION - MISUSE.

The Commission may cancel any permit for violation of any condition contained in the permit, for use of water for a purpose other than stated in the permit or for the diversion of more water than permitted.

Section 304.12. CANCELLATION - NONUSE.

The Commission may cancel any permit issued for a period in excess of three (3) years if the permittee fails to take reasonable steps to obtain the ability to utilize the water permitted within two (2) years from the date of issuance of the permit.

Section 304.13. IRRIGATION PERMITS RUN WITH LAND.

Irrigation permits run with the land described in the permit and can only be assigned to a subsequent owner or lessee of the land.

These permits may not be sold separate and apart from the land, and any such attempts shall void the permit.

Section 304.14. PREDETERMINED ALLOCATION PLAN.

After an application for a permit to make an intrabasin transfer is received, the Director where deemed desirable and appropriate shall initiate a study consistent with the provisions of Title III Subtitles VII, VIII, and IX hereof to determine the allocations that should be made if a water shortage should occur. The purpose of this advance determination is to allow immediate implementation of allocations if a water shortage does occur. In selecting the watershed to be studied, preference shall be given to those areas where a water shortage is most likely to occur.

Section 304.15. WATER LEVEL MONITORING.

A. The Director may, as he determines to be necessary, cause a staff gage to be securely placed in the stream at the point of diversion. Each staff gage shall have the following clearly marked thereon:

1. Minimum Stream Flow - a zone marked in red. If the water level is at or below this mark, all diversions shall cease except diversions for domestic and municipal domestic use.

2. Allocation Level - a zone marked in yellow. If the water level is in the yellow zone, only water lawfully diverted that has not yet become subjected to reduction by allocation, water that has been allocated or water usable without allocation (as defined hereinafter in Section 307.2) may be diverted from the stream.

3. Normal Diversion Level - a zone marked in green. If the water level is in the green portion of the staff gage at the point of diversion, all allocations shall cease, riparians may resume water diversions and the non-riparian permittees may divert such water as shall have been permitted to them.

4. Other pertinent water level markings deemed appropriate by the Director.

B. It shall be unlawful for anyone to remove or alter any staff gages placed for these purposes and all such staff gages shall indicate on them that they are the property of the Commission.

Section 304.16. APPEAL OF PERMIT DECISION.

The applicant for a water rights permit or any affected person shall have the right to protest the action of the Director in either granting or denying the application for a permit or to protest any special conditions that may be placed thereon and a

permittee shall have the right to protest the cancellation of a permit. If a protest is filed by the applicant within ten (10) days of the action of the Director or is filed by an affected person within twenty (20) days of filing of the permit in the office of the circuit clerk of the county of the point of diversion, a hearing shall be scheduled before the Commission or a hearing officer that may be designated by the Commission for review of the Director's action in the issuance, non-issuance or inclusion of special conditions on the permit.

SUBTITLE V. PROCEDURE FOR ISSUANCE OF SURFACE WATER PERMITS
FOR INTERBASIN USE BY NON-RIPARIANS

Section 305.1. BASINS DEFINED.

For purposes of interbasin transfers under this Subtitle, the State shall be divided into five (5) basins as listed below and depicted in Exhibit 1:

- A. Arkansas River Basin.
- B. Delta Basin.
- C. Ouachita River Basin.
- D. Red River Basin.
- E. White River Basin.

Section 305.2. AUTHORITY.

A person shall be authorized to divert and transfer excess surface water for interbasin use upon proper application and the granting of a permit by the Director. Water may be diverted for storage to meet future needs.

Section 305.3. APPLICATION.

A. Applications for a permit shall be on a form furnished by the Director and shall be filed with the Director. The applicant shall disclose:

- 1. The quantity of water to be diverted for direct use.
- 2. The quantity of water to be stored away from the point of diversion when needed.
- 3. The total amount of water to be diverted.
- 4. The proposed time or times of diversion.
- 5. The purpose for which the water is to be diverted.
- 6. The location of the land on which the water is to be used.
- 7. The proposed conservation plan.
- 8. If for irrigation:
 - (a) The area and legal description of the lands irrigated.

(b) The kinds of crops to be cultivated under irrigation during the water year.

9. Any other reasonable information requested by the Director.

B. All other questions contained on the form shall be answered or stated to be not applicable.

Section 305.4. NOTICE AND HEARING.

A. Upon receipt of an application for the interbasin transfer of water, the Director shall cause to be published a Notice of Application. The notice shall be published at the expense of the applicant at least once a week for two consecutive weeks in the newspaper having the largest circulation in the county from which the diversion would be made, in the county to which the diversion would be made, and in any other county through which the diversion would pass. The notice shall be in the form and shall set forth all pertinent information prescribed by the Commission.

B. The application shall be heard by the Director at a time and place to be set by the Director.

Section 305.5. COMMISSION STAFF DETERMINATION.

Prior to the hearing the Commission staff shall have made the following determinations:

A. The supply of water available in the basin of origin and in the basin to which proposed diversion is to be made.

B. The amount of excess surface water at the point of diversion of the basin of origin.

C. The present and future water demands of water users in the basin of origin.

D. Whether there are water shortages in the basin at the point of proposed use.

E. The availability at a reasonable cost of alternative sources of water.

Section 305.6. APPLICANT TO PROVE.

The applicant shall be prepared to prove at the hearing that:

A. The water that is the subject of the proposed transfer can be feasibly transported out of the basin of origin to alleviate water shortages existing at the point of proposed use.

B. That other available supplies and sources of water in the watershed to which it is being diverted are inadequate.

C. That the demands placed upon available water supplies in the watershed to which it is being diverted exceed the water available for beneficial use.

D. That no significant damages should result to the basin of origin as a result of the proposed transfer.

Section 305.7. DIRECTOR'S DECISION.

A. Within thirty (30) days following the hearing, the Director shall render his decision in granting or denying the application for interbasin transfer of water, with any special conditions to be placed thereon to protect the watershed of the basin of origin and to insure against an adverse impact of the transfer on other lawful water users.

B. The Director shall grant a permit after he determines that:

1. The water to be used interbasin by a non-riparian will be excess surface water, as defined herein.

2. The proposed use is a reasonable and beneficial use.

3. The transfer will cause no significant adverse environmental impact in the basin of origin.

C. In determining the reasonableness of the proposed use the Director may consider the following:

1. The lack of availability at a reasonable cost of alternative sources of water.

2. The environmental impact of the proposed transfer.

3. The effect of the proposed transfer on other lawful water uses.

Section 305.8. PERMIT CONDITIONS.

If approved, the Director shall issue a permit and shall designate thereon:

A. The amount of water permitted.

B. The authorized use.

C. The point of approved diversion.

D. A legal description of the land of intended use.

E. Approval of the Conservation plan.

Section 305.9. SPECIAL CONDITIONS.

A. The Director may place upon a permit any special conditions necessary to ensure that the water to be diverted is excess surface water and to guarantee a reasonable and beneficial use of the water. The special conditions may include any reasonable limitations or conditions to protect the environment of the watershed of origin and to insure against an unacceptable adverse impact of the transfer on other lawful water uses. An example would be limitations on season or time of withdrawal.

B. The Director may require the applicant to transfer more water than the applicant plans to use so that it may be made

available to others in the immediate vicinity of the proposed route of transportation. The permittee may also be required to contract with other users for the transportation of a specific quantity of water, for a specific period, at a reasonable price to be paid to the permittee by the other users. The price must be based only on the cost of transportation of the water and not for the water itself.

Section 305.10. LENGTH OF PERMIT.

Permits for interbasin transfer may be issued for a period fixed by the Director, taking into consideration the investment required by the permittee to utilize the water and the period reasonably required to amortize such investment, but in no event in excess of fifty (50) years.

Section 305.11. FILING.

Upon the issuance of a permit to divert to non-riparian uses, the Director shall furnish the permit to the applicant, a copy to the Commissioners and cause a copy thereof to be retained in the Commission's records at the office of the Commission. The permittee shall record his permit in the office of the Circuit Clerk in each County through which the diverted water shall pass.

Section 305.12. PERMITTEE WATER USE REPORT.

All permittees shall report the amount of water diverted during each water year of the permit pursuant to Title III Subtitle II of these rules.

Section 305.13. CHANGE IN PERMIT CONDITIONS.

A. Permittee shall notify the Director of his desire to transfer the permit to another person. Permits are freely transferable.

B. Permittee wishing to make other changes in permit conditions shall seek prior approval of the Director. The procedures set out in these rules shall be used for permit modification other than as set out in Subsection (a).

Section 305.14. FEES.

A. A \$500 fee must be submitted with an application for a permit to make an interbasin water transfer to a non-riparian.

B. A \$100 annual permit fee shall be collected on or before October 1st of each year.

C. Permits shall remain valid from year to year until date of expiration provided annual fees are not delinquent and permit terms are honored. (See Sections 305.15 and 305.16.) The Director may deny an application or revoke an existing

interbasin water transfer permit if efforts to collect either the application or annual fees fail.

D. Installation and maintenance of flow measurement devices shall be paid by the permittee.

E. If the application is not approved, the portion of the fee applicable to the cost of the water flow gage(s) and its installation shall be refunded.

Section 305.15. CANCELLATION - MISUSE.

The Commission may cancel any permit for violation of any condition contained in the permit, for use of water for a purpose other than stated in the permit or for the diversion of more water than permitted.

Section 305.16. CANCELLATION - NONUSE.

The Commission may cancel any permit issued for a period in excess of three (3) years if the permittee fails to take reasonable steps to obtain the ability to utilize the water permitted within two (2) years from the date of issuance of the permit.

Section 305.17. IRRIGATION PERMITS RUN WITH LAND.

Irrigation permits run with the land described in the permit and can only be assigned to a subsequent owner or lessee of the land. Permits may not be sold separate and apart from the land, and any such attempts shall void the permit.

Section 305.18. PREDETERMINED ALLOCATION PLAN.

After an application for a permit to make an interbasin transfer is received, the Director, where deemed desirable and appropriate, shall initiate a study consistent with the provisions of Title III Subtitles VII, VIII, and IX hereof to determine the allocations that should be made if a water shortage should occur. The purpose of this advance determination is to allow immediate implementation of allocations if a water shortage does occur. In selecting the watershed to be studied, preference shall be given to those areas where a water shortage is most likely to occur.

Section 305.19. WATER LEVEL MONITORING.

The same procedure established herein in Section 304.15 for water flow gage(s) at the point of diversion of water by a non-riparian for intrabasin transfers shall be applicable to transfers by a non-riparian for interbasin transfers.

Section 305.20. APPEAL.

The applicant or any affected person shall have the right to protest the decision of the Director in granting or denying the application for the interbasin transfer of surface water or to

protest any special conditions placed on the approval. The appeals procedure is set out in Title I Subtitle V of the Commission's Rules Of Organization and General Operations. No interbasin transfer of water shall be made until the time for appeal has expired.

SUBTITLE VI. INTERSTATE TRANSFER

Section 306.1. APPLICATION.

No application for interstate transfer shall be considered by the Commission unless it contains all information requested by the Commission including the following:

- A. Amount of water to be transferred.
- B. Certification that a copy of application has been filed with the appropriate agency of the water receiving state.
- C. Method and route of transfer.
- D. Point(s) of proposed diversion.
- E. Point(s) of use.
- F. Purpose of use.
- G. Water Quality impact of proposed diversion.

Section 306.2. FEES.

- A. A \$500 fee must be submitted with an application for a permit to make an interstate water transfer to a non-riparian.
- B. A \$100 annual permit renewal fee shall be collected on or before October 1st of each year.
- C. Permits shall remain valid from year to year until date of expiration provided annual fees are not delinquent and permit terms are honored.
- D. The Director may deny an application for or revoke an existing interstate water transfer permit if efforts to collect either the application or annual fees fail.
- E. Installation and maintenance of flow measurement devices shall be paid by the permittee.

Section 306.3. COMMISSION NOTIFICATION.

Upon receiving an application, containing the information listed in the above paragraph, the Director shall notify the Commission at its next regular meeting.

Section 306.4. NOTICE AND HEARING.

The Commission shall schedule a public hearing on the request as soon as reasonably possible. Notice of the hearing shall be published at least once a week for two (2) consecutive weeks in

the newspaper having the greatest circulation in each of the counties involved.

Section 306.5. COMMISSION DETERMINATION.

Within 120 days after the hearing the Commission must determine whether the out of state water transfer would be in the public interest of the citizens of Arkansas. In reaching that decision, the Commission must consider the following factors:

- A. The supply of water available in Arkansas.
- B. The present and future water demands of water users in Arkansas.
- C. Whether there are water shortages in Arkansas.
- D. Whether the water to be transported could feasibly be transported to alleviate water shortages within Arkansas.
- E. The supply and source of water available to the applicant in the state of intended use.
- F. The demands placed upon the applicant's supply in the state of intended use.

Section 306.6. REPORT AND RECOMMENDATION.

- A. The Commission shall submit its report and recommendations to the next regular session of the Arkansas General Assembly.
- B. If the Commission recommends the interstate transfer of water, it shall recommend the price to be paid to the State of Arkansas for all water transferred and how allocation procedures will apply during times of water shortage.
- C. If approved by the General Assembly, a compact should be negotiated with the state of intended use and any other state through which the water would be transported.

**SUBTITLE VII. ALLOCATION OF SURFACE WATER DURING PERIODS
OF WATER SHORTAGE-IN GENERAL**

Section 307.1. ALLOCATION DURING SHORTAGES.

Whenever a shortage of water in any stream exists, the Commission may on its own initiative, or on the petition of any person claiming to be affected by such shortage of water, after notice and hearing, allocate the available water among the uses affected by the shortage of water in a manner that each may obtain an equitable portion of the available water.

Section 307.2. WATER USABLE WITHOUT ALLOCATION.

The following water is usable without allocation:

- A. Diversions by any persons of less than 325,900 gallons (1 acre-foot) of water in any water year.
- B. Water captured by tailwater recovery systems.
- C. Water diverted from lakes, ponds, reservoirs, or springs in the exclusive ownership of one person.
- D. Water previously captured whether transmitted by ditch, channel or pipe.
- E. Water diverted from intermittent streams.
- F. Diffused surface water.
- G. Water captured by instream pit reservoirs, dams constructed pursuant to a lawful permit, or low water weirs and water stored in federal impoundments.
- H. Non-consumptive usage.

Section 307.3. RESERVED WATER.

The following uses and needs shall have a reserved water right, prior to allocations for other uses and needs:

- A. Domestic and municipal domestic.
- B. Minimum stream flow.
- C. Federal water rights.

Section 307.4. CRITERIA FOR ALLOCATION.

All allocations shall give reasonable preference first to sustaining life, then to maintaining health, and finally to increasing wealth. The allocations shall reserve the water required for domestic and municipal-domestic use, federal water rights and for minimum stream flow and shall then give preference in the following order for water uses and for types of water diversions:

- A. Priority of Water Use:
 - 1. Agriculture.
 - 2. Industry.
 - 3. Hydropower.
 - 4. Recreation.
- B. Priority of Water Diversions:
 - 1. Riparian.
 - 2. Non-riparian intrabasin transfer.
 - 3. Non-riparian interbasin transfer.
 - 4. Out of state transfer.

Section 307.5. RESERVED WATER - PUBLIC SYSTEMS.

Public water systems historically dependent upon the affected stream shall receive a reserved water right for municipal domestic water use prior to allocations for other uses.

Section 307.6. RESERVED WATER - MINIMUM STREAM FLOWS.

Minimum stream flows as established pursuant Title III Subtitle III of these rules shall receive a reserved water right prior to allocations for other uses.

Section 307.7. RESERVED WATER - FEDERAL WATER RIGHTS.

There may be some water over which the United States has a preemptive right that is superior to rights of others.

Section 307.8. REGISTERED RIPARIAN USER.

Any riparian landowner who has properly registered a water diversion with the Commission in compliance with Ark. Code Ann. •15Ä22Ä215 and the rules of the Commission shall be granted an allocation of water.

Section 307.9. UNREGISTERED RIPARIAN USER.

Any riparian landowner who has not previously diverted water nor timely registered any previous water diversions with the Commission, may not be granted any allocation of water during times of shortage above that required for domestic use.

Section 307.10. PERMITTED NON-RIPARIAN USER.

Non-riparian uses, including intrabasin, interbasin, and interstate transfers, previously authorized by the Commission which are beneficial and which do not interfere with the uses enumerated herein in Sections 307.5, 307.6, 307.7, 307.8 and 307.9 may be granted an allocation.

**SUBTITLE VIII. PROCEDURE FOR THE ALLOCATION OF SURFACE
WATER DURING PERIODS OF SHORTAGE**

Section 308.1. INFORMATION REQUIRED IN THE PETITION.

The following information must be included in any petition for allocation:

- A. Name, address, telephone number of petitioner.
- B. Water diversion registration certificate numbers of petitioner from previous years, if any.
- C. Current water permit number, if applicable.
- D. Name of stream from which diversion is being made or from which diversion is sought.
- E. Legal description of petitioner's land for water diversion to include county, section, township and range.
- F. Petitioner's requirements for use of water, if for irrigation of farm crops - type of crop (soybeans, rice, etc.) and acreages of each type.

G. Name and address of any person allegedly depriving the petitioner of his lawful water right and a full explanation of that water use.

H. Vicinity details on topographic or other appropriate map, with outline of irrigated acres and points of diversions.

Section 308.2. NOTICE OF PETITION AND INFORMAL RESOLUTION.

Within five (5) working days after receipt of a petition from a person the Director finds eligible to receive an allocation of water, the Director shall notify the affected persons by certified mail that a petition has been received by the Commission requesting an allocation of water. This notice will advise the affected persons of the following:

A. Name of petitioner and substance of the petition.

B. The affected persons right to discuss the matter with the petitioner and the Commission staff, as an alternative to a hearing on mandatory allocation by the Commission.

Section 308.3. INFORMAL RESOLUTION - FAILURE TO RESOLVE.

If an affected person fails to either respond to the Director's invitation to discuss the complaint or does not agree to voluntarily share the available water supplies within a period of seven (7) days after receipt of the Director's letter of notification, the Commission will then proceed to initiate the process of allocation if the Commission finds a water shortage exists or is imminent.

SUBTITLE IX. FORMAL ALLOCATION OF SURFACE WATER DURING PERIOD OF WATER SHORTAGE

Section 309.1. HEARING DATE AND LOCATION.

The Director shall establish a date for a public hearing on the matter. If matters to be considered at the hearing are of general application throughout the State, the hearing shall be held in the City of Little Rock, and notice with respect thereto shall be published in a newspaper of general circulation throughout the State. If the purpose of the hearing relates only to surface water within one county, that hearing shall be held in the county involved, and notice of the hearing shall be published in the newspaper having the greatest circulation in that county. If the purpose of the hearing is with respect to surface water in more than one county, the hearing shall be held in one of those counties and notice shall be published in one or more newspapers which together have the greatest circulation in all of the counties involved.

Section 309.2. HEARING NOTICE.

A notice of this hearing will be sent by certified mail to the petitioner and all affected persons.

Section 309.3. HEARING OFFICER.

The hearing will be chaired by a commissioner, the Director or a member of the Commission's staff designated by the Director.

Section 309.4. PRE-HEARING STAFF REVIEW.

Prior to the public hearing, the Commission staff, in conjunction with other interested federal or state agencies will make an investigation of the alleged water shortage which shall include the following information:

- A. Verification of information submitted by petitioner.
- B. Water use requirements of all persons lawfully taking water from the stream.
- C. Classification of diversions as either riparian or non-riparian.
- D. Quantity of water in stream under varying flow levels.
- E. Determination of in-stream beneficial uses and quantity of water required therefor.
- F. Quantity of water available for diversion under varying flow levels.
- G. Quantity allowable to each diverter on a daily basis.

Section 309.5. NOTICE OF DIRECTOR'S RECOMMENDATION.

Prior to the public hearing, the other affected persons will be advised of the Director's findings of their water use requirements and will also be advised that the Commission will ask for verification during the public hearing.

Section 309.6 COMMISSION DECISION.

All information gathered by the Commission staff and presented at the hearing shall be analyzed and considered by the Commission before making allocations. Within ten (10) working days after the public hearing, the Commission will make a determination concerning the alleged water shortage and issue the appropriate orders to the affected persons.

Section 309.7. NOTICE OF DECISION.

The petitioner and all affected persons will be notified of the Commission's determination by certified mail.

Section 309.8. APPEALS.

The petitioner or any affected person shall have the right to appeal decision under this subtitle. Appeals procedure is set out

in Title I Subtitle V of the Commission's Rules of Organization and General Operation.

SUBTITLE X. COMMISSION INITIATED ALLOCATION

Section 310.1. PROCEDURE.

If the Commission determines that a shortage exists and decides that allocation of available water is necessary, the Director shall notify all registered and permitted diverters that the conditional allocation orders previously assigned are in effect. If conditional allocation orders have not been issued, hearing procedures shall be initiated as provided herein in Title III Subtitle IX.

SUBTITLE XI. IMPLEMENTATION OF ALLOCATION PLAN

Section 311.1. ALLOCATION PLAN - IN GENERAL.

Allocations will be expressed as a percentage of available water in the stream under varying levels of flow on a daily basis. Percentages will vary from 0% (the level of minimum stream flow) to 100%. Each diverter who is assigned a water allocation will be provided a chart containing allowable daily pumping allocations expressed both as a percentage and as a quantitative measure. If a staff gage is determined by the Director to be necessary, the charts shall also contain the corresponding applicable staff gage reading. Such stream flow staff gage at the point of diversion will have markings relevant to the chart, and diversions are permitted when the stream flow is in the yellow zone on the gage, as defined in Section 304.15.

Section 311.2. CONSERVATION PLAN.

As a part of the allocation plan, the Commission shall require the development and implementation of a conservation plan by any and all diverters. The conservation plan may be required with or without a reduction in a diverter's withdrawals.

Section 311.3 INSTALLATION OF MONITORING DEVICES.

Unless installed by the Commission, diverters assigned a water allocation will be responsible for the installation and maintenance of such water level gages at diversion points as the Commission may direct. Assistance in installation and maintenance of gages may be provided by the Commission.

Section 311.4. ALLOCATION LEVEL.

If the stream flow reaches the allocation level (yellow zone on staff gage), whether allocations have been implemented by the Commission or not, the diverter shall comply with the allocation assigned him.

Section 311.5. NON-DIVERSION LEVEL.

If the stream flow reaches the minimum stream flow (red zone on staff gage), whether allocations have been implemented by the Commission or not, all diverters must stop all pumping immediately except for water withdrawn for domestic and municipal-domestic use.

Section 311.6. WATER LEVEL MONITORING.

When an allocation has been implemented, it will be the responsibility of the diverter to read the gage nearest his point of diversion on a frequency to be determined by the Director.

Section 311.7. NO TIME OR RATE RESTRICTIONS PROVIDED DAILY
ALLOCATIONS NOT EXCEEDED.

There will be no restriction on the time or rate of pumping when the level of flow is above the diverters designated minimum staff gage reading, provided daily pumping allocations are not exceeded.

Section 311.8. CEASE ALLOCATION.

When the Director determines that sufficient water exists in a stream to meet the requirements of all diverters, (at or above green zone on staff gage) the allocations will cease to be applicable and all diverters will be notified by the Director.

SUBTITLE XII. PENALTIES

Section 312.1. LOSS OF ALLOCATION.

Failure to comply with the provisions of these rules will invalidate any allocation previously granted by the Commission and willful violations may prejudice their future applications for permits or allocations.

Section 312.2. ADDITIONAL PENALTIES.

In addition to other penalties authorized by these rules, the Commission may invoke penalties as provided in Ark. Code Ann. •15-22-204. All penalties received shall go to the Arkansas Water Development Fund.

SUBTITLE XIII. EMERGENCY ALLOCATIONS

Section 313.1. TIME FRAME COMPRESSION.

When the Commission either receives a petition for allocation or determines that a shortage exists, which in the opinion of the Commission requires an immediate determination of the need for allocation, an emergency may be declared by the Commission and the time frames for actions set forth in these rules may be shortened to whatever extent the Commission deems necessary.

Section 313.2. MODIFICATION FOR PUBLIC HEALTH, SAFETY, OR WELFARE.

When the Commission determines that the shortage of water is so severe that public health, safety or welfare is significantly affected, they may declare an emergency and modify any advance determination developed under Section 304.14, Section 305.18 or the priorities set out in Title III Subtitle VII such that the effects upon the public health, safety or welfare is minimized.